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ORACLE AMERICA, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.  
Plaintiff,  
v.  
GOOGLE INC.  
Defendant.

Case No. CV 10-03561 WHA  
**[PROPOSED] ORDER GRANTING  
ORACLE'S MOTION IN LIMINE #6  
REGARDING RULE 706 EXPERT,  
PROFESSOR KEARL**

Dept.: Courtroom 8, 19th Floor  
Judge: Honorable William H. Alsup

1 This Court has read and considered Plaintiff Oracle America, Inc.'s Motion in Limine #6  
2 Regarding Rule 706 Expert, Professor James Kearl, and any Opposition thereto and Reply in  
3 support thereof, and any and all additional supporting papers.

4 Based thereon [and on statements made by counsel at the hearing on the Motion], IT IS  
5 HEREBY ORDERED THAT Oracle's Motion is GRANTED.

6 Portions of Professor Kearl's analysis, opinions, and conclusions are stricken and his  
7 testimony on those matters excluded under Federal Rules of Evidence 402, 403, 702, 703, and  
8 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny because they  
9 are legally irrelevant, erroneous, prejudicial, and (in one instance) rely on information and  
10 estimates of information that Google refused to produce in discovery.

11 Specifically, Prof. Kearl's analysis, opinions, conclusions, and testimony regarding his  
12 second and third disgorgement calculations are excluded because they rely on non-infringing  
13 alternatives that are legally irrelevant and prejudicial. In addition, Prof. Kearl's first calculation  
14 includes a deduction based on non-infringing alternatives, and thus that deduction is likewise  
15 excluded as legally irrelevant and prejudicial.

16 Finally, Prof. Kearl's deduction for traffic acquisition costs ("TAC") is also excluded is  
17 irrelevant, erroneous, and unreliable.

18 IT IS SO ORDERED.

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THE HONORABLE WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE  
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